

REMARKS

Claims 2-4, 6, 8-10, 12, 14-16 and 18-22 are pending in the application. The Examiner has objected to claims 4, 10 and 16 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Paper No. 7, page 9. Applicants have amended claims 4, 10 and 16 to be written in independent form including all of the limitations of the base claim and any intervening claims and hence claims 4, 10 and 16 are allowable.

Applicants note that claims 4, 10 and 16 were not amended to overcome prior art but to be written in independent form. Hence, the amendments made to claims 4, 10 and 16 were not narrowing in scope and therefore no prosecution history estoppel arises from the amendments to claims 4, 10 and 16. *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 62 U.S.P.Q.2d 1705, 1711-12 (2002); 56 U.S.P.Q.2d 1865, 1870 (Fed. Cir. 2000). Further, the amendments made to claims 4, 10 and 16 were not made for a substantial reason related to patentability and therefore no prosecution history estoppel arises from such amendments. *See Festo Corp.*, 62 U.S.P.Q.2d 1705 at 1707 (2002); *Warner-Jenkinson Co. v. Hilton Davis Chemical Co.*, 41 U.S.P.Q.2d 1865, 1873 (1997).

Applicants further note that Applicants have adopted Examiner's suggestion in the Office Action (Paper No. 7, page 9). Furthermore, the Examiner states that "claims 4, 10 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." Paper No. 7, page 9. Applicants have amended claims 4, 10 and 16 incorporating the limitations of claims 2, 8 and 14 and therefore adopt Examiner's suggestion. Consequently, claims 4, 10 and 16 are allowable. According to M.P.E.P. §1207, amendments may be entered upon filing of an appeal brief provided that the amendment conforms to the requirements of 37 C.F.R. §1.116. According to 37 C.F.R. §1.116, amendments may

be made complying with any requirements of form expressly set forth in a previous Office Action. Applicants adopt Examiner's suggestion as set out in Paper No. 7, which requires only a cursory review by the Examiner and therefore satisfies the requirements of 37 C.F.R. §1.116. M.P.E.P. §1207. Furthermore, a showing of good and sufficient reasons as to why the amendment is necessary and not presented earlier is not required because Applicants adopt Examiner's suggestion as set out in Paper No. 7, which requires only a cursory review by the Examiner. M.P.E.P. §1207. Therefore, the amendments of claims 4, 10 and 16 should be entered resulting in an allowance of claims 4, 10 and 16.

CONCLUSION

Applicants respectfully request that the Examiner call Applicants' attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining issues.

Respectfully submitted,

WINSTEAD SECHREST & MINICK P.C.

Attorneys for Applicants

By: 

Kelly K. Kordzik
Reg. No. 36,571
Robert A. Voigt, Jr.
Reg. No. 47,159

P.O. Box 50784
Dallas, Texas 75201
(512) 370-2832

AUSTIN_1\249692\1
7036-P251US